Anthropology and International Law

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Abstract

International law, including human rights law, has expanded enormously in the past century. A growing body of anthropological research is investigating its principles and practices. Contemporary international law covers war and the treatment of combatants and noncombatants in wartime; international peace and security; the peaceful settlement of disputes; economic arrangements and trade agreements; the regulation of the global commons such as space, polar regions, and the oceans; environmental issues; the law of the sea; and human rights. This review demonstrates how anthropological theory helps social scientists, activists, and lawyers understand how international law is produced and how it works. It also shows the value of ethnographic studies of specific sites within the complex array of norms, principles, and institutions that constitute international law and legal regulation. These range from high-level commercial dispute settlement systems to grassroots human rights organizations around the world.

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INTRODUCTION

International law has expanded enormously in the past century and has spawned a growing body of anthropological research on its principles and practices. Anthropological theory helps social scientists, activists, and lawyers to understand how international law is produced and how it works. International law originally focused on relations among states, but since World War II has expanded to include individuals, both as violators of international law and as bearers of rights defined by international law. The international law of human rights, in particular, defines a series of individual rights that states are obligated to uphold. Nevertheless, the existence and operation of international law depend primarily on nation-states and are embedded in the political relations of these states. This review focuses on the development of international law since the middle of the twentieth century and examines the contributions that anthropologists and other social scientists have made to understanding its operation and significance.

The principle domains of contemporary international law are war and the treatment of combatants and noncombatants in wartime; international peace and security; the peaceful settlement of disputes; economic arrangements and trade agreements; the regulation of the global commons such as space, polar regions, and the oceans; environmental issues; the law of the sea; and human rights. Human rights principles address rights such as free speech, rights to protection from torture and from extrajudicial killing, and rights to work, to development, to affordable housing, and to health. Since the 1940s, a series of international conventions have articulated and established this body of human rights.

International law creates a global legal order through conventions and treaties, monitoring and oversight, and social pressure. The sources of international law are primarily international conventions recognized by states, general principles of law recognized by states defined as "civilized," and customary international law (Bederman 2001, pp. 12–13). International law is increasingly based on a system of treaties, which nations enter into voluntarily. These are both bilateral treaties between two countries and multilateral ones between three or more countries (Bederman 2001, p. 26). Custom and treaties are coequal sources of international law; neither trumps the other. Because countries are joined by a large number of contracts, trade agreements, political alliances, academic networks, and other translational connections, they comply with international law because of reciprocity, the desire for membership in the international community, the wish to appear "civilized," pressure from other countries for trade agreements, and myriad other forms of indirect pressure (see Koh 1997).

International law aspires to universality but exists alongside and above domestic law—the law of nation-states. The domestic laws of nations have been incorporated into international law. Often the domestic law of nation-states serves as the basis for international legal arrangements. However, international law also shapes domestic law (Bederman 2001, pp. 6–7; Kingsbury 2003). Thus, despite the myth that international law is entirely separate from domestic law, in practice the systems are closely connected.

However, international law differs from domestic law in that it is grounded in a system of sovereign nations. Each nation is accountable to its own domestic order and not to a larger international community beyond what it consents to do (Bederman 2001, p. 50). According to the classic doctrine of sovereignty, no central authority has the power to force sovereign states to comply with its decisions. Short of war, no country can force another to change its practices toward its own citizens. However, sovereignty is not a matter of absolute autonomy, although the degree to which it is constrained by international law is a matter of ongoing debate among international lawyers (see Kingsbury 2003). In practice, within the present global order sovereignty is increasingly circumscribed (see Chayes &

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Chayes 1998; Slaughter 2004). It is becoming contingent on compliance with a minimum of human rights principles toward a nation's own residents. The expansion of a rights discourse and enthusiasm for the rule of law facilitated by the 1990 collapse of the USSR and the establishment of liberal political orders in parts of Eastern Europe, against the backdrop of destructive ethnonationalism in the former Yugoslavia, facilitated this understanding of sovereignty (see Wilson 1997, p. 2; Cowan 2001). South Africa is a prime example of a country whose systematic violations of human rights principles under the apartheid system made it an international pariah state. However, less-powerful countries are more vulnerable to this pressure, whereas some of the most powerful, such as the United States, refuse to be bound by some aspects of international law at all. The United States, for example, typically complies with human rights conventions while refusing to ratify them (see Ignatieff 2001; Koh 2003).

In the absence of a central authority, how does international law work? Where do these laws come from? How are they enforced? Some legal scholars argue that this is not real law because it lacks centralized judicial institutions, police, and the means to enforce compliance. One of the basic questions about international law is why countries obey these laws. Realists claim that states comply only when it is in their self interest (see Dembour 2006). Conversely, research on social movements and nongovernmental organizations (NGOs) shows that civil society plays a role in holding governments accountable. Moreover, although violence by nonstate actors, such as paramilitaries or guerilla movements, poses dilemmas for a system of international law premised on controlling the actions of states, international legal institutions are beginning to define these actions as subject to their intervention (Alston 2005). Thus, international law is changing and developing at the same time as its enforcement mechanisms are ambiguous and dependent on a complex set of social processes. Anthropological analysis can illuminate some of these processes.

Some intriguing parallels can be found between the way international law works and the law of villages without centralized rule-making bodies and formal courts, the classic domain of legal anthropology. Both rely on custom, social pressure, collaboration, and negotiations among parties to develop rules and resolve conflicts (e.g., Nader 1969, Nader & Todd 1978, Redfield 1967). In both, law is plural and intersects with other legal orders, whether that of nation-states or other organizations or forms of private governance (Nader 1990). Each order constitutes a semiautonomous social field within a matrix of legal pluralism (Moore 1978). Both depend heavily on reciprocity and the threat of ostracism, as did the Trobrianders in Malinowski's (1926) account. Gossip and scandal are important in fostering compliance internationally as they are in small communities. Social pressure to appear civilized encourages countries to ratify international legal treaties (Hathaway 2002, Koh 1997) much as social pressure fosters conformity in small communities. Countries urge others to follow the multilateral treaties they ratify, but treaty monitoring depends largely on shame and social pressure (Bayefsky 2001, Merry 2003). Clearly there are many differences between social ordering in villages and in the world, but there are some similarities.

Some principles in international law are so widely accepted that they are known as customary law, *jus cogens* (compelling law), much as informal law and custom form the basis of social ordering in small communities (e.g., Nader 1969, 1990; Nader & Todd 1978). *Jus cogens* norms are so well established that they are no longer enforced and do not depend on consent. The 1969 Vienna Convention that defines international agreements calls *jus cogens* norms those "accepted and recognized by the international community of States as a whole as a norm from which no derogation

is permitted."[1] The Universal Declaration of Human Rights (UDHR) is now considered *jus cogens*. According to a 2003 opinion of the Inter-American Court of Human Rights "the principle of equality before the law, equal protection before the law and nondiscrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws."[2] *Jus cogens* norms trump other norms of customary or treaty law. Laws become established as customary when states announce them and other states do not complain or object (Bederman 2001, p. 20).

Similar to law in small communities, international law rules are produced through a process of deliberation and consensus formation rather than imposition (see Riles 2000, Merry 2006a). Global conferences, commission meetings, and trade negotiations all produce resolutions, declarations, and policy statements. The conventions that make up international law are produced by multiparty discussion and negotiation among many countries. Much of international law consists of multilateral treaties, developed collaboratively by individual countries. To some extent, the legitimacy of these international norms grows out of this process of international negotiation and compromise and the international consensus that emerges over time. This process parallels that occurring in local communities when they negotiate the rules they live by through disputing. For example, Comaroff & Roberts' (1981) study of disputing among the Tswana people in South Africa shows how the parties to the conflict draw on a repertoire of norms, general principles, and customs to resolve particular conflicts. The outcomes of the conflict and the rules that they reinforce govern the repertoires available for future conflicts (Comaroff & Roberts 1981).

The norms of international law typically begin from nonbinding resolutions or statements of general principles, such as the Universal Declaration of Human Rights, which become solidified over time through subsequent resolutions and discussions. Only after a state ratifies a treaty is the state committed to complying with its terms. Non-binding declarations and treaties may well lead to binding treaties in the future (Bederman 2001, p. 27). Environmental law, for example, had no rules at all 60 years ago but gradually drew on general principles from domestic judicial systems and customary international law to begin treaty making. There are now a series of treaties and detailed regulatory regimes with conventions on acid rain, ozone depletion, fisheries management, wild-life preservation, and trade restrictions to promote these goals (Bederman 2001, p. 48; see Zerner 2003). In the terms used by international lawyers, environmental norms have moved from "soft law" to "hard law." In addition to global systems of treaties and regulatory regimes are a number of regional bodies and treaties.

THE DEVELOPMENT OF INTERNATIONAL LAW

Although international commercial law is quite ancient and there has long been concern about regulating war, the development of a set of international regulations governing political and social issues is relatively recent. Over the past century, the web of treaties, agreements, and contracts linking nations together has dramatically expanded. Members of different countries now participate in creating such global legal orders, whether concerning the regulation of sex trafficking or concerning the emission of greenhouse gases. However, now as in the past, powerful nations play a disproportionately large role in shaping these institutions.

[1]Art. 53, Vienna Convention on the Law of Treaties, 23 May 1969, U.N.T.S., vol. 1155, p. 331, quoted in Satterthwaite 2005, p. 43.

[2]Inter-American Court of Human Rights, *Juridical Condition and Rights of the Undocumented Migrants*, Advis. Opin. OC-18/03 (2003), para. 101, cited in Satterthwaite 2005, p. 43.

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The formation of a system of international law generally dates to the international order of nation states created by the Treaty of Westphalia in 1648 in which the emerging nation states of Europe agreed to a system in which each state respected the autonomy and independence of other states (Bederman 2001, p. 2). Of course, at that time the majority of the world lay outside this system. Indeed, there was a close connection between the expansion of international law and the emergence of empire. Anghie (1999, 2004) argues that international law was shaped by the sixteenth-century encounter between the Spanish and the Indians. At that time, Francisco de Vitoria, one of the originators of international law, substituted a secular and universalizing basis for legal authority for religious papal authority. He argued that because the Indians had a capacity for reason, they could be incorporated under the same system of natural law as the Spanish. This natural law system allowed the Spanish to travel and sojourn in the Indians' territory and to respond to any Indian attempt at resistance as an act of war that justified retaliation. Thus, under Vitoria's theory, the Spanish gained the right to "defend" themselves against Indian resistance (Anghie 1999, p. 95). Rather than seeing international law as a preexisting system brought to the colonial encounter, Anghie shows how the encounter and the new problems it posed formed international law.

One of the central concerns of international law is the regulation of transnational economic activity. The expansion of transnational corporations and transnational economic activity has, over the past two decades, produced an enormous expansion of international mechanisms of managing disputes and negotiating rules (see Halliday & Osinsky 2006). With the expansion of the global production system and the global market for financial services has come global legal regulation, particularly commercial arbitration. New legal regimes to guarantee property rights and contracts for firms doing transnational business are increasingly important (Sassen 1996, pp. 12–20). A series of institutions, such as the European Union, North American Free Trade Agreement (NAFTA), the World Trade Organization, the International Monetary Fund, and the World Bank (Halliday & Osinsky 2006), have developed in the postwar period to handle international economic and trade relations. Snyder's work on trade networks demonstrates the possibilities of an ethnography of the international trade system (Snyder 2005). A growing body of institutions works to resolve international commercial conflicts. Between 1970 and 1990, the system of international private justice shifted from relatively informal arbitration based on European scholars and the International Chamber of Commerce in Paris to "offshore litigation" with greater emphasis on Anglo-American law firms for resources and clients, on fact finding, and on adversarial lawyering (Dezalay & Garth 1995, pp. 34–36). Myriad systems exist for handling international conflicts such as the negotiation of disputes over rivers that cross national boundaries (Nader 2005).

Arup's (2000) study of the texts and impacts of the World Trade Organization, especially two of its new multilateral agreements—General Agreement on Trade and Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)—examines how these new forms of global legal regulation operate. He analyzes them as examples of legal pluralism, or interlegality, to use Santos's term (1995). This term emphasizes how legalities clash, mingle, hybridize, and interact with one another. This takes place at several levels: between national legalities and among legalities not necessarily centered on any nation state (Arup 2000, p. 5). These legalities include the reemergence of a supranational *lex mercatoria* based on transnational contracts, model codes, and private arbitration.

The rapid development of offshore financial systems and tax havens provides ways to evade state control of financial transactions for

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taxation purposes. Carried out under the aegis of the free market, such systems build on discourses of unique and distinctive places within a global market and the celebration of flexible persons who can readily move from one place to another (Maurer 1997). They provide places for escaping state regulation of financial transactions and tax payments, whereas the digitalizing of financial transactions makes them more difficult to trace and police. Although such changes are typically seen as an assault on state sovereignty, they may represent more fundamental shifts in the location of regulation. Investors in offshore locations still need to operate with high levels of trust and to have some guarantees of security of ownership and guarantees of contracts. The rapid proliferation of offshore financial systems raises new questions about the location and institutionalization of the regulatory systems that enable them to function (see Maurer 1997, 2005).

THE DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

Since World War II, an elaborate system of human rights documents and institutions for implementing these documents has developed internationally, focused largely on the United Nations (U.N.) and its subsidiary organizations (see generally Steiner & Alston 2000; Kingsbury 2003). The development of the human rights system means that not only states but also individuals are considered to have rights and responsibilities under international law. A series of conventions focused on specific spheres of rights, such as civil and political rights, economic and social rights, women's rights, children's rights, the rights of racial minorities, and the rights to protection from torture and genocide, constitutes the statutory basis of the human rights system (Bayefsky 2001, Peters & Wolper 1995). This system is built on the same formal structure of autonomous, sovereign states tied through treaties as the rest of international law. Only states that ratify these conventions are bound by them, but the major conventions are widely ratified. Although no judicial body can enforce compliance with these norms, the conventions represent a transnational body of norms governing social justice and specifying the rights and obligations of states to their members.

The concept of human rights itself has been dramatically transformed over the past 50 years as activists have deployed it in a variety of innovative contexts. A major expansion has occurred from an individually based conception of legal and political rights adhering to individuals to protect them from the oppression of the state, such as rights to freedom from torture or the right to due process, to more collective rights to survival and well-being (see Messer 1993; Sarat & Kearns 1995). New human rights, many of which are more collective, are constantly being created by activists and leaders of the human rights system. These include the right to development, elaborated in the 1980s (Alston & Robinson 2005, Sen 1999), and women's rights in the 1990s (Peters & Wolper 1995).

During the 1980s and 1990s, indigenous peoples sought support from the U.N. Human Rights Commission for their claims to resources and self-determination, culminating in a draft declaration of rights of indigenous peoples (Coulter 1994, Tennant 1994, Trask 1993). The development of human rights documents dealing with indigenous peoples raised issues of group or community rights with particular force. Beginning from a movement by leaders of indigenous groups in the Americas, an initial declaration on principles for the defense of indigenous nations was formulated and presented at a U.N. conference in 1977. The U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities, part of the U.N. Human Rights Commission, created the Working Group on Indigenous Populations in 1982. This soon became the leading international forum for hundreds of indigenous peoples' leaders and representatives as they met each year in July at the

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Working Group meetings in Geneva (Coulter 1994, p. 37; see also Anaya 1994, 2000). Indigenous peoples incorporated into settler states such as the United States, Canada, Australia, and New Zealand drew on the language of self-determination developed in the late 1940s and 1950s to fight colonialism (see Nagengast & Turner 1997, Trask 1993, Turner 1997).

Although indigenous groups sought self-determination under international law, they were generally not seeking statehood or independence but survival of their cultural communities. They were searching for cultural identity and control over land and other resources rather than autonomy (Lam 1992). This has been a fundamentally legal struggle, using the language and institutions of the law rather than other forms of political contestation. One of the major objectives has been the establishment of some degree of legal autonomy and self-governance. The Draft Declaration on the Rights of Indigenous Peoples, finalized in 1994 after years of discussion among indigenous groups and U.N. representatives, includes the right to create and maintain indigenous peoples' own governments and their own laws and legal systems (Coulter 1994, p. 40). However, as of 2006, it was still not adopted.

By the 1990s, there were many national, regional, and international human rights commissions and organizations and a burgeoning civil society of human rights organizations. Strong regional human rights institutions existed in the Americas and Europe and were developing in Africa. However, the post-9/11 concern with terrorism may dampen human rights enthusiasm as security takes on greater significance (Wilson 2005a). In some ways, concerns with peace and security have long been antithetical. Peace may be achieved at the price of ignoring human rights violations, whereas respecting rights can lead to war, as some political leaders and scholars claim occurred when the United States invaded Iraq in 2003 (see Cushman 2005).

Human rights development was also buffeted by global political struggles such as the Cold War. Although the Universal Declaration included both civil and political rights and social and economic rights, it proved politically impossible to produce a convention with both sets of rights. The development of the human rights framework in the 1940s to 1960s followed two tracks, one supported by the capitalist and democratic West, which focused on civil and political rights, and the other advocated by socialist governments, which emphasized economic and social rights such as rights to food, housing, and health. Whereas the Soviets advocated the right to work and other social rights, the United States promoted civil and political rights such as free speech and freedom of religion. In the 1950s, worried that an international investigation into the economic, educational, and political disparities between whites and African Americans in the United States could prove deeply embarrassing and provide a platform for the Soviets to trumpet the importance of food and housing rights, U.S. State Department officials decided to emphasize free speech. This provided a platform to criticize the Soviet suppression of dissidents (Anderson 2003). The division between these categories of rights remains deep. Developing countries take the lead in asserting social and economic rights, and the United States focuses on civil and political rights. Sen's argument that development includes promoting human rights emphasizes the linkage among rights and the importance of social and economic rights (e.g., Sen 1999; see Alston & Robinson 2005).

Inequalities in wealth and power between the global North and the global South have a major impact on the shape and operation of the human rights system. As Rajagopal (2003) argues, international law changed in response to the demands made by Third World social movements. For example, the shift from economic growth to poverty reduction came in response to the politicization of poverty and demands for change. Although the development of international law is often described

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by legal scholars as the logical outgrowth of international legal deliberation, he argues that it responds to the pressure of poor and discontented people and their forms of resistance.

Despite worries that the human rights system is a new form of imperialism, it has produced very few interventions to protect human rights (Donnelly 2003). However, violations of human rights principles are increasingly being used as justifications for various forms of international military action, as in Kosovo. States and international NGOs sometimes pressure other states to protect the human rights of their populations. For example, during the 1990s the United States sought to use the U.N. High Commission on Human Rights to put pressure on China to reverse its poor human rights record (Foot 2000).

Thus, the human rights system represents a new international legal regime, although one constructed on the old international order of sovereignty. Although it is now the dominant language of global justice, the concern with terrorism and security post-9/11 may shrink its importance in the twenty-first century (Wilson 2005a). Because individuals are endowed with human rights on the basis of their human dignity rather than on the basis of their membership in a nation, it is more incorporative than nation-state law and valuable for the burgeoning populations of noncitizens such as illegal immigrants and refugees (see Coutin 2000). These are groups excluded from citizenship but still endowed with human rights, at least theoretically although not always in practice (see Dembour 2003; Sarat & Kearns 2001).

Nineteenth-century imperialism produced a transplantation of laws, courts, wigs, and many of the other mechanisms of European rule to the very different contexts of colonial society (see Comaroff & Comaroff 1991, 1997; Merry 2000). International law adds a new layer of legal pluralism to this legacy of colonialism. The British colonial government often encouraged the maintenance of separate personal laws governing family and marriage on the basis of religious membership as a way of governing through existing institutions. This strategy minimized costs and reduced forms of resistance to colonial control. These legal distinctions fostered separatism and ethnic violence in the postcolonial period in places such as India, Malaysia, and Fiji (see Merry & Brenneis 2004). Bowen (2003) and Benda-Beckmann & Benda-Beckmann have studied the emergence of forms of postcolonial legal pluralism in Indonesia that include international law (e.g., Benda-Beckmann & Benda-Beckmann 2005, 2006; Benda-Beckmann 2001).

TOWARD AN ANTHROPOLOGY OF INTERNATIONAL LAW

Anthropology can make significant contributions to the understanding and analysis of international law. Its focus on the meanings and practices of small social spaces, whether in villages or the corridors of international tribunals, enables a far deeper understanding of how the various facets of international law actually work. The analogy to village law, despite vast differences in these forms of law, shows the analytic possibilities of focusing on particular situations, individual actions, wider structural inequalities, and systems of meaning. Although international lawyers recognize the historically produced and eclectic nature of international law, ethnography reveals the variations in the way it operates in many locations. For example, Coxshall's (2005) analysis of a group of Andean villagers' refusal to participate in the Peruvian Truth and Reconciliation Commission shows why they are indifferent to the commission, their difficulty in narrating the pain of state violence and conflict, and the gendered and racialized identities that shape these decisions. Her ethnography offers a valuable antidote to claims that narrating pain in such a forum promotes forgiveness and healing. Moreover, an anthropological perspective on international law leads to greater attention to the systems of meaning that shape international actions and their historical and structural origins. For

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example, Razack's (2004) recent study of the violence of Canadian peacekeepers in Somalia highlights the racial narratives that undergird the whole peacekeeping project, as the "civilized" North seeks to rescue the apparently chaotic and violent South from its inability to govern itself. She locates these narratives in the Canadian imperial conquest of native peoples and long-standing imperial narratives of white supremacy. The latter help to construct a Canadian self-identity as peacekeeper to the world.

A growing body of anthropological scholarship on human rights NGOs provides a rich and complex understanding of these organizations and the kinds of support they provide to the human rights system. Local, national, and transnational NGOs contribute to the drafting of documents and shoulder a significant portion of the burden of implementing human rights declarations (see Keck & Sikkink 1998; Risse et al. 1999). They do research, identify issues, generate media attention, define problems in human rights terms, and bring these issues to the attention of international political organizations (see Keck & Sikkink 1998; Otto 1999). McLagen (2005) shows how NGOs create media representations of human rights abuses, even providing technical expertise to other organizations for developing issues, preparing videos, and targeting publics by developing a range of specialized messages. Although NGOs and governments collaborate in these important ways, there are also significant tensions between them. Governments resist the criticism and exposure of violations that are the standard approach of human rights organizations (see Merry 2006a).

Human rights NGOs are caught between international and local normative commitments, pressures from international funders, the constraints of national and nationalist politics, and the limitations of human rights discourse itself (e.g., An-Na'im 2002, Berry 2003, Karim 2001, Leve 2001, Leve & Karim 2001, Pigg 1997, Rosga 2005, Samson 2001). As Rosga (2005) argues in her analysis of the challenges of producing a report on child trafficking in Bosnia/Herzogovina, creating human rights reports is deeply political. Her ethnography of writing a human rights report, a basic feature of human rights activism, delineates the political and social hurdles to producing this kind of knowledge. The obstacles include inequalities in resources, ambiguities about who is in control, and restrictions on what counts as expertise. She confronted the preferences of wealthy donors, their assumptions about the incompetence of local researchers, ambiguities and distrust in the construction of research budgets and methodologies, simmering tensions between Serbian and Muslim groups, and fundamental problems of translation (2005). There is, she notes, no word in the Bosnia language for trafficking.

Anthropologists play complex and sometimes contradictory roles as scholars and as activists in the chaotic, multilayered world of international and local human rights advocacy (Jean-Klein & Riles 2005, Coxshall 2005, Rosga 2005, Merry 2006a, Sharma 2006). Sometimes anthropologists work with human rights NGOs, merging their scholarship with activism in ways that challenge traditional notions of the anthropologist as outside observer but contributing to deeper insights and a more ethical engagement with their subjects. Anthropologists often play critical roles as advocates and supporters of indigenous claims. For example, an important victory in the Awas Tingni decision of the Inter-American Court of Human Rights in 2001, which established a principle of the right of indigenous peoples to the protection of their customary land and resources, depended on substantial background research by anthropologist Ted McDonald (Anaya & Grossman 2002, p. 1). The people of Awas Tingni in the Atlantic coast region of Nicaragua received substantial assistance from United States-based lawyers and anthropologists in their case, which produced the first legally binding decision by an international tribunal upholding the collective land and resource rights of indigenous

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people when the state failed to do so (Anaya & Grossman 2002, p. 2; see also Anaya 1994, 2000).

The transplantation and localization of concepts of rights and the rule of law are also central to disseminating human rights. Legal institutions, procedures, and laws are taken from one cultural context and recreated in quite another, usually by wealthy donor nations. Localization has been examined by anthropologists working in areas where human rights and other forms of international law have become increasingly important, such as Goodale's work in Bolivia (2002), An-Naim's on Africa (2002), and Merry's on women's rights in several Asia/Pacific countries (2006a), as well as by international relations scholars (Keck & Sikkink 1998, Risse Ropp & Sikkink 1999). Tate's (2004) study of human rights in Columbia reveals the opportunistic appropriation of this technology by groups on the political right as well as the left.

INTERNATIONAL LAW AND KNOWLEDGE PRACTICES

An anthropology of international law includes studying up; looking at transnational organizations concerned with trade, peacekeeping, human rights, and humanitarian aid to see how they create rules and impose pressure to support them; and looking at the larger political and economic contexts that shape international law, despite the claims of some practitioners that the system evolves according to its own principles and technologies. It can focus on the knowledge practices of law and their transnational circulation: particular points of intersection, technologies of legality, and sites of negotiation among multiple systems of law. The knowledge practices of law, including its technologies for producing truth and defining identity, often sit at the intersection of plural legalities. As Ong & Collier (2005) note, as global forms are articulated in specific situations, which they refer to as "global assemblages," they provide a site where the conditions of individual and collective existence are problematized and open to technological, political, and ethical reflection and intervention (p. 4). Globally circulating legal concepts and practices become sedimented, fixed into documents, letters of intent, forms of agreement, contracts, and other legal forms (see Riles 2000, 2004; Pottage & Mundy 2004; Miyazaki & Riles 2005). As new situations emerge, such as the need to determine under which system of law conflicts over collateral will be judged, documents are developed which structure these decisions (A. Riles, unpublished manuscript). Similarly, negotiations around development projects in Africa take place through a technology of matrices and numbers, even when these are far removed from actual situations. The technology itself, as Rottenburg (2002) shows, produces the truth, which serves as the basis for further development planning. The knowledge practices produce particular forms of organizing information shaped by legal rules. These forms themselves then create representations of knowledge.

The transnationally mobile knowledge practices of international and domestic law reshape subjectivity in important ways, redefining persons as citizens, noncitizens, deportees, and adoptees, for example (Coutin 2000, Coutin Mauer & Yngvesson 2002). Because of law's capacity to define identity and establish the rights and duties of various statuses, its transnational dispersal has significant implications for persons who cross boundaries. As Kelly (2004) shows in Palestine, the lines that laws create serve to include and exclude, constituting identities and marginalities. The knowledge practices of law include multiple ways of defining selves and, as they become part of local consciousness, producing new subjectivities. The focus on knowledge practices as a domain of legality and the use of ethnographic methods to examine specific technologies and practices of law represent innovative anthropological contributions to understanding the impacts of international law.

INTERNATIONAL HUMAN RIGHTS LAW

A substantial body of research in the field of legal anthropology has developed theoretical frameworks useful for analyzing international human rights law. This work demonstrates the way law creates social order through defining relationships, punishing certain forms of behavior, and creating categories of meaning. Law empowers powerful groups to construct normative orders that enhance their control over resources and people, but also provides to less privileged people avenues for protest and resistance (Hirsch & Lazarus-Black 1994). Human rights law also has this two-sided impact, buttressing neoliberal political and economic regimes but providing some recourse for the powerless.

Legal anthropologists show how law makes persons and things (Pottage 2004, Pottage & Mundy 2004). Human rights law defines persons in terms of autonomy, choice, and bodily integrity, in contrast with other systems of law that focus on obligation and exchange. Strathern (2004) describes a situation in Papua New Guinea, for example, in which a young woman was slated to be given to another family to repay a tribal debt. The national human rights commission prevented the exchange on the grounds that it violated her human rights, even though she herself saw the exchange as an obligation she should fulfill and saw herself in terms of her relationships.

Anthropologists are now analyzing human rights as social practice. In contrast with earlier work that debated the ethical and theoretical advantages of universal moral principles or relativistic ones (An-Na'im 1992, Nagengast & Turner 1997, Zechenter 1997; but see Cowan et al. 2001, Dembour 2006, Messer 1993), this later work examines human rights as a social process of producing norms, knowledge, and compliance. It asks where human rights ideas and doctrines are made and by whom, how various groups seek to champion and implement them, and how actors who claim them think about these rights. For example, Dembour (2006) reexamines the universalism/relativism debate through a study of human rights practice as revealed in cases at the European Court of Human Rights. She sees human rights as a matter of discourse and practice located in particular places and uses her analysis of practice to problematize the meanings of universalism and relativism.

Scholarship on the practice of human rights asks how human rights ideas and institutions make a difference in people's everyday lives and explores how they become locally meaningful (see Wilson 1996; Cowan et al. 2001; Goodale 2006; Goodale & Merry 2007; Merry 2006a,b). Ethnographic work on rights explores rights consciousness and asks when and why individuals choose to mobilize rights (see Merry & Stern 2005). One study of disabled Americans, for example, shows their reluctance to assert disability rights even when laws exist to define those rights (Engel & Munger 2003). In the field of indigenous rights, a growing body of scholarship examines the way customary forms of justice among indigenous groups interact with international human rights law (Sierra 1995, Speed & Collier 2000).

Some ethnographic research explores the phenomenon of state retreat and legal failure: of places where law is absent. In some of these places, international law may move in to replace failing domestic law. Ethnic conflict and violence are frequent markers of this situation, and some argue that weak states are more hazardous for human rights than are strong states (Ignatieff 2001). Work on violence, suffering, and lynching provides some insight into the effects of weak states (Das et al. 1998). In Bolivia, for example, Goldstein analyzes the expansion of collective community lynching as a response to the failure of state police and courts (Goldstein 2003, p. 2004). He attributes the withdrawal of the state from providing justice to neoliberal structural reform and its ideologies of privatization and devolution so that security becomes the responsibility of citizens (2005, p. 395).

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INTERNATIONAL TRIBUNALS AND TRANSITIONAL JUSTICE

International tribunals of various kinds represent another form of global law. Here also anthropologists have done important work, such as challenging the concepts of justice and reconciliation that shape the tribunals. International criminal tribunals hold leaders accountable for offenses such as war crimes, genocide, or abuses connected with war, such as rape or sexual slavery. Tribunals to settle property and financial disputes between countries are at least two centuries old, but international criminal courts that hold war crimes violators to account date from the Nuremberg trials after World War II (Bederman 2001, p. 45). Special tribunals have been set up for Rwanda, the former Yugoslavia, Sierra Leone, and East Timor, with others under discussion. In 2002, the International Criminal Court came into existence to try war crimes, crimes against humanity, and genocide. Another form of international tribunal is the truth commission, which uses truth-telling and the search for forgiveness to heal societies shattered by armed conflict and ethnic division. Wilson's (2000, 2001) study of the South African Truth and Reconciliation Commission (TRC) shows how its message of redemption and reconciliation satisfied some but not others, who preferred street-level popular justice and punishment for wrongdoing.

Whether a criminal justice approach is more effective than a reconciliation model is currently a hotly debated issue. The former is better at holding individuals accountable but can handle only a few cases, whereas the latter may be better at healing social conflicts but fails to punish perpetrators. Hybrid models incorporate some aspects of both models. Another difficult issue for transitional justice is whether it should be managed by an international body or by the leaders of the nation experiencing ethnic conflict or state repression. If the same leaders are in power, a nationally based tribunal is problematic. Another issue is whether the goal is to hold individuals responsible or to produce a national narrative of the conflict. The proponents of the South African TRC saw it as the chance to tell the story of apartheid. Wilson (2005b) argues that the ongoing trial of Milosevic by the International Criminal Court for Yugoslavia is similarly producing a relatively objective history of the era, but that this is only possible because the tribunal is internationally created and managed.

Clearly, careful ethnographic work on such tribunals—including studies such as Coxshall's (2005), which explores the reasons victims choose not to testify, or Wilson's (2001), which shows some communities' preference for punishment rather than forgiveness—is essential in understanding how these tribunals operate and challenging assumptions about postconflict healing. Anthropological research can contribute knowledge that will address questions about the relative merits of criminal trials, with their delay and expense and small defendant rolls, and the more open, conciliatory, and amnesty-focused proceedings of truth commissions. In general, as Jean-Klein & Riles (2005) argue, anthropology has much to contribute to understanding human rights practices.

CONCLUSIONS

New global legal institutions for peacekeeping and collective security, commercial law, humanitarian law, human rights law, and more recently international criminal law are gradually emerging (Kingsbury 2003). Law's internationalization is a product of transnational movements such as colonialism, contemporary transnational activism, the creation of a new world order of negotiated contracts and agreements linking together diverse states, the expansion of human rights activism and institutions, and the transplanting of legal institutions themselves. The relationship between weak international systems and nation-state law remains deeply

ambiguous, however. These new institutions incorporate in fluid and complicated ways laws, procedures, and practices from previously existing national and local systems of law. They contribute to the creation of a new legal order but are also deeply constrained in their authority by the system of sovereignty that underlies all transnational endeavors and inevitably reflects the global inequalities among rich and poor nations. Government aid programs, NGO activism, U.N. organizations, and social movements such as global feminism have all contributed to this internationalization of law and the transformations it evokes.

Given the ambiguity and novelty of these developments, anthropological research plays a critical role in examining how international law works in practice, mapping the circulation of ideas and procedures as well as examining the array of small sites in which international law operates, whether in Geneva, a local office of a human rights NGO, or the International Criminal Court. Despite the significant legal and social science scholarship on this system of law, its principles, and its practices, anthropology is particularly well equipped to provide insight into the individuals, the issues, the practices, and the meanings that constitute international law as a social process.

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Annual Review of Anthropology

Volume 35, 2006

Contents

Annu. Rev. Anthropol. 2006.35:99-116. Downloaded from www.annualreviews.org
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Prefatory Chapter

On the Resilience of Anthropological Archaeology
Kent V. Flannery 1

Archaeology

Archaeology of Overshoot and Collapse
Joseph A. Tainter 59

Archaeology and Texts: Subservience or Enlightenment
John Moreland 135

Alcohol: Anthropological/Archaeological Perspectives
Michael Dietler 229

Early Mainland Southeast Asian Landscapes in the First Millennium A.D.
Miriam T. Stark 407

The Maya Codices
Gabrielle Vail 497

Biological Anthropology

What Cultural Primatology Can Tell Anthropologists about the Evolution of Culture
Susan E. Perry 171

Diet in Early *Homo*: A Review of the Evidence and a New Model of Adaptive Versatility
Peter S. Ungar, Frederick E. Grine, and Mark F. Teaford 209

Obesity in Biocultural Perspective
Stanley J. Ulijaszek and Hayley Lofink 337

Evolution of the Size and Functional Areas of the Human Brain
P. Thomas Schoenemann 379

Linguistics and Communicative Practices

Mayan Historical Linguistics and Epigraphy: A New Synthesis
Søren Wichmann 279

Environmental Discourses
Peter Mühlhäusler and Adrian Peace 457

Old Wine, New Ethnographic Lexicography
Michael Silverstein 481

International Anthropology and Regional Studies

The Ethnography of Finland
Jukka Siikala 153

Sociocultural Anthropology

The Anthropology of Money
Bill Maurer 15

Food and Globalization
Lynne Phillips 37

The Research Program of Historical Ecology
William Balée 75

Anthropology and International Law
Sally Engle Merry 99

Institutional Failure in Resource Management
James M. Acheson 117

Indigenous People and Environmental Politics
Michael R. Dove 191

Parks and Peoples: The Social Impact of Protected Areas
Paige West, James Igoe, and Dan Brockington 251

Sovereignty Revisited
Thomas Blom Hansen and Finn Stepputat 295

Local Knowledge and Memory in Biodiversity Conservation
Virginia D. Nazarea 317

Annu. Rev. Anthropol. 2006.35:99-116. Downloaded from www.annualreviews.org
by City University of New York - John Jay College of Criminal Justice on 08/27/13. For personal use only.

Food and Memory
Jon D. Holtzman 361

Creolization and Its Discontents
Stephan Palmié 433

Persistent Hunger: Perspectives on Vulnerability, Famine, and Food Security in Sub-Saharan Africa
Mamadou Baro and Tara F. Deubel 521

Theme 1: Environmental Conservation

Archaeology of Overshoot and Collapse
Joseph A. Tainter 59

The Research Program of Historical Ecology
William Balée 75

Institutional Failure in Resource Management
James M. Acheson 117

Indigenous People and Environmental Politics
Michael R. Dove 191

Parks and Peoples: The Social Impact of Protected Areas
Paige West, James Igoe, and Dan Brockington 251

Local Knowledge and Memory in Biodiversity Conservation
Virginia D. Nazarea 317

Environmental Discourses
Peter Mühlhäusler and Adrian Peace 457

Theme 2: Food

Food and Globalization
Lynne Phillips 37

Diet in Early *Homo*: A Review of the Evidence and a New Model of Adaptive Versatility
Peter S. Ungar, Frederick E. Grine, and Mark F. Teaford 209

Alcohol: Anthropological/Archaeological Perspectives
Michael Dietler 229

Obesity in Biocultural Perspective
Stanley J. Ulijaszek and Hayley Lofink 337

Food and Memory
Jon D. Holtzman 361

Annu. Rev. Anthropol. 2006.35:99-116. Downloaded from www.annualreviews.org
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Old Wine, New Ethnographic Lexicography
Michael Silverstein 481

Persistent Hunger: Perspectives on Vulnerability, Famine, and Food Security in Sub-Saharan Africa
Mamadou Baro and Tara F. Deubel 521

Indexes

Subject Index 539

Cumulative Index of Contributing Authors, Volumes 27–35 553

Cumulative Index of Chapter Titles, Volumes 27–35 556

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